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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



File: WAC 02 035 56440

Office: CALIFORNIA SERVICE CENTER Date:

MAY 14 2003

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is engaged in wholesaling clothing and other garments. It seeks to employ the beneficiary temporarily in the United States as its operations manager. The director determined that the petitioner had not established a qualifying relationship with the foreign entity.

On appeal, counsel states that the beneficiary has been working in the overseas parent company as its operations manager for several years. Counsel further states that the overseas parent company and the U.S. company are owned by the same group of persons and that an affiliate relationship exists. Counsel submits documentation showing that the foreign entity wired \$50,000 to the petitioning firm to show that there has been a relationship between the two entities since 1992. Counsel argues that the petitioner is qualified to transfer the beneficiary to the U.S. company to work.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. § 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The issue to be discussed in this proceeding is whether the petitioner and the foreign entity are qualifying organizations. The petition indicates that a subsidiary relationship exists between the U.S. and foreign entities as the foreign company, Federal Merchandising Corporation, owns 100 percent of the petitioning organization, Ultimate Apparel, Inc. On appeal,

counsel contends that an affiliate relationship exists between the two entities as both are owned and controlled by the same group of individuals.

Regulations at 8 C.F.R. § 214.2(1)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (1)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Regulations at 8 C.F.R. § 214.2(1)(1)(ii)(I) state:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

Regulations at 8 C.F.R. § 214.2(1)(1)(ii)(J) state:

Branch means an operation division or office of the same organization housed in a different location.

Regulations at 8 C.F.R. § 214.2(1)(1)(ii)(K) state:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

Regulations at 8 C.F.R. § 214.2(1)(1)(ii)(L) state, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In this case, the shares of stock of the petitioning firm are held by two individuals as follows:

[REDACTED]	150 (30%)
[REDACTED]	350 (70%)

The shares of stock of the petitioner's claimed affiliate abroad, Federal Merchandising Corporation, are held by four individuals as follows:

[REDACTED] (Robert Chen)	220 (44%)
[REDACTED] (Cristina Chen)	180 (36%)
[REDACTED]	50 (10%)
[REDACTED]	50 (10%)

Counsel's argument that 100 percent ownership of the petitioning firm and 80 percent ownership of the foreign entity are owned by [REDACTED] and [REDACTED] who are husband and wife is sufficient to establish a parent-subsidary relationship is not persuasive. The two entities are not owned by the same parent or individual, or by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. Therefore, a qualifying relationship between the U.S. entity and the beneficiary's foreign employer has not been shown to exist. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed